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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,793	12/18/2001	Hendricus W. J. Van Tol	00771.00025	4261
22907	7590	10/07/2003	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,793

Applicant(s)

VAN TOL ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14-17 and 21-26 is/are rejected.
- 7) ☒ Claim(s) 13 and 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,026,650 to Miller.

Regarding Claim 1, 3-5, and 7-9, Miller teaches a holder for transport with at least one carrier (Miller #11) and a series of clamping elements (#12 and 20a) which are fixed to the carrier and which are each adapted to clamp a plant cutting (Fig. 3), wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane (Fig.1) and wherein the central plane extends at a right angle to the plant cuttings; and inherently the holder transports whole plant cuttings placed in the holder.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7-12, 14-17, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,979,110 to Tai.

Regarding Claim 1, Tai teaches a holder for transport with at least one carrier (Fig. 3 #30) and a series of clamping elements (#1) which are fixed to the carrier and which are each adapted to clamp a plant cutting (#21), wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane; and the holder transports the whole plant cuttings placed in the holder. Tai is silent on the central plane extending at a right angle to the plant cuttings. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to provide a horizontal support structure in addition to the vertical support for plant species that have branches and vines that grow both vertically and horizontally. This modification inherently teaches parallel clamps in a central plan that are at right angles to the plant cuttings. This modification is merely a change in orientation and arrangement to meet the needs of different plant species and configurations and does not present a patentably distinct limitation (Tai Col. 3 line 40).

Regarding Claim 3, Tai as modified teaches the carrier extends as a strip (Fig. 3 #30) and that the clamping elements (#1) are fixed to the carrier at regular mutual distances

Regarding Claim 4, Tai as modified discloses that the clamping elements (#1) are each fixed on the same side of the carrier (Fig.3 #30).

Regarding Claim 5, Tai as modified discloses that the mutual distance between the clamping elements on one side of the carrier is greater than or equal to the mutual distance between the center of the clamping elements so that two carriers with their clamping elements **can be** placed between each other (Fig. 3 #30 and #1).

Regarding Claim 7, Tai as modified discloses the carrier is divided into substantially rigid pieces (Fig.3 area above first clamp, area between second clamp, and area below second clamp; Tai Col. 2 line 31), which are couple in mutually flexible manner (Tai Col. 2 line 1-2).

Regarding Claim 8, Tai as modified teaches the carrier has been made substantially from rigid material (Tai Col. 2 line 31).

Regarding Claim 9, Tai as modified teaches the clamping elements have been made from softer material than the carrier (Tai Col. 2 line 1-2).

Regarding Claim 11, Tai as modified teaches the clamping elements (#1) each have at least two parts (#15 and #10), at least one of which is connected resiliently to the carrier (#15).

Regarding Claim 12, Tai as modified discloses that the parts each take substantially the form of a semi-cylindrical surface, wherein both parts are connected to the carrier such that in the non-loaded situation both parts are separated on either side by a narrow gap (Fig. 1-3).

Regarding Claim 14, Tai as modified teaches the inner wall of both parts of the clamping elements together have a substantially oval section (Fig. 2 #101 and 16).

Regarding Claim 21, Tai as modified inherently teaches applicant's broad claim language that each of the parts of the clamping elements are connected to the carrier (Tai Fig. 4) for tilting on an axis extending substantially at a right angle to the plane of the carrier

Regarding Claim 22, Tai modified teaches each of the parts of the clamping elements are connected to the carrier by means of a connection subject torsion (Fig. 3 #13).

Regarding Claim 23, Tai as modified teaches that the parts of the clamping elements each have a plate which has a clamping surface on one side of the connection to the carrier and are provided on the other side with an engaging surfaces for moving apart the clamping surfaces in the manner of a lever (Fig. 3 #152 and #13).

Regarding Claims 10 and 24, Tai as modified teaches clamping elements, but is silent on injection molding. However, Tai teaches the clamping elements are plastic (Tai Col. 2 line 1-2) and injection molding is an old and well-known means of plastic forming. It would have been obvious to one of ordinary skill in the art to modify the teachings of Tai for ease of manufacturing.

Regarding Claims 15 and 16, Tai as modified teaches one bridge (Tai #14), but is silent on two bridges for connecting to the carrier. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Tai since the modification is merely a duplication of parts to provide additional support to the clamp structure and does not present a patentably distinct limitation.

Regarding Claim 17, Tai as modified teaches that both parts of the clamping element are mutually connected by a thin strip of material (#12).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,979,110 to Tai in view of U.S. Patent No. 5,052,086 to Nasuno.

Regarding Claim 6, Tai as modified is silent on the carrier being substantially flexible. However, Nasuno teaches a substantially flexible carrier (Nasuno Fig. 5 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings of Tai with the teachings of Nasuno since the carriers are merely alternate equivalents selected to accommodate different plant types and configurations.

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,026,650 to Miller.

Regarding Claims 25 and 26, Miller teaches the carrier is manufactured from flat material in which at least three lips (Miller Fig. 3 #12 and 11) at the position of each clamping element (Miller #20a), which lips are adapted to fixedly clamp the plant. Miller is silent on the holder being manufactured out of paper or plastic and is punch formed. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Miller since the modification is merely the selection of a known material for intended use in order to reduce manufacturing costs.

Allowable Subject Matter

Claims 13 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 09 September 2003 have been fully considered but they are not persuasive.

Applicant has not distinguished within the text of the claim limitations that the plant cutting is contained exclusively within the holder and that the holder is not used in any combination i.e. a pot or vase. Perhaps applicant should provide the negative limitation that the plant cutting has "no support in the ground or soil". Regarding the teachings presented by Miller, examiner maintains that Miller does present all of the structural limitations claimed by Applicant. For example, applicant does not claim that the bottom of the plant cutting is freely suspended, i.e. that there is nothing surrounding it. A plant cutting could be in a vase, in the ground, or it could be in a plant pot with soil (as the result of a propagation method) in which case the teachings of Miller are applicable and the device could be use for transport. The holder would move simultaneously with the pot (i.e. long rectangular pot such as a window box) with the end posts of Miller contained within the same pot that the plant is planted. Clamping can be defined as holding something securely or to fasten and element #20a of Miller does in fact clamp the plant cutting. Regarding the argument that Tai does not teach that the plant cuttings extend substantially parallel to each other, examiner maintains that it is inherent practice and accepted wisdom in the field to have multiple pots in a

row for sale or display (i.e. multiples of Fig. 4). Therefore, the plant cuttings are inherently parallel to each other. Applicant has not presented structural limitations that distinguish applicant's invention over the teachings of the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV

A handwritten signature in black ink, appearing to read "Peter M. Poon".

703-308-2574